

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2017-0504

IN THE MATTER OF

JAMES G. AND AMELIA M. SWEENEY
SWEENEY DAIRY
TULARE COUNTY

This Complaint is issued to James G. and Amelia M. Sweeney (Discharger) under the authority of California Water Code (Water Code) section 13323 to assess administrative civil liability pursuant to Water Code section 13268 for failure to submit a 2015 Annual Report.

The Assistant Executive Officer of the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) alleges, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger owns and operates the Sweeney Dairy (Dairy), located at 30712 Road 170, Visalia, California, County of Tulare.
2. The Dairy is regulated by the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order), which was adopted by the Central Valley Water Board on 3 October 2013. (Exhibit A.) The Reissued General Order replaces the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (2007 General Order) and accompanying Monitoring and Reporting Program (MRP). The Reissued General Order and accompanying MRP contain reporting requirements for dairies regulated by the Reissued General Order.
3. The Reissued General Order and accompanying MRP require the submission of an Annual Report for the 2015 calendar year for regulated facilities by 1 July 2016 (2015 Annual Report), including an Annual Dairy Facility Assessment with facility modifications implemented to date.
4. The Discharger has consistently failed to meet the Annual Report requirement under the 2007 General Order and the 2013 Reissued General Order. The Central Valley Water Board has adopted Administrative Civil Liability (ACL) Orders for the Discharger's failure to submit the 2009 Annual Report and Waste Management Plan, the 2010 Annual Report, the 2011 Annual Report, the 2012 Annual Report, the 2013 Annual Report, and the 2014 Annual Report.

STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED

5. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or

failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.

6. Pursuant to Water Code section 13267, subdivision (b), a regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.
7. Pursuant to Water Code section 13268, subdivision (a), any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
8. Pursuant to Water Code section 13268, subdivision (b)(1), civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

ALLEGED VIOLATION

9. On 15 August 2016, the Central Valley Water Board staff issued a Notice of Violation, notifying the Discharger that the 2015 Annual Report with appurtenant components had not been received. (Exhibit B.) The Notice of Violation also requested that the delinquent report be submitted as soon as possible to minimize potential liability.
10. On 1 December 2016, the Central Valley Water Board staff issued a pre-ACL settlement letter notifying the Discharger that an administrative civil liability complaint for failure to submit the 2015 Annual Report was forthcoming. (Exhibit C.) The letter included a calculation of the maximum penalty (\$153,000) as of 1 December 2016 for failure to submit the missing report. The Discharger was provided an opportunity to meet with the Central Valley Water Board staff to discuss the alleged violation and submit any information regarding the factors listed in Water Code section 13327 that would be deemed relevant to determining an appropriate monetary penalty. The letter requested that all responses be received by 6 January 2017. The letter also indicated that if staff did not receive a response from the Discharger by 6 January 2017, the Assistant Executive Officer would issue a Complaint to the Discharger. As of the date of this Complaint, the Discharger had not responded to the 1 December 2016 pre-ACL letter.

11. Central Valley Water Board's compliance tracking system and case files indicate that to date the Board has not received the 2015 Annual Report or any of the appurtenant components thereof.
12. The Discharger is alleged to have violated the following sections of the Reissued General Order and of the MRP:
 - A) Provision G.3 of the Reissued General Order, which states:

"The Discharger shall comply with the attached Monitoring and Reporting Program R5-2013-0122 which is part of this Order, and future revisions thereto or with an individual monitoring and reporting program, as specified by the Central Valley Water Board or the Executive Officer."
 - B) Provision G.13 of the Reissued General Order, which states in part:

"The Discharger must comply with all conditions of this Order, including timely submittal of technical and monitoring reports as directed by the Executive Officer."
 - C) The MRP, which states in part:

"An annual monitoring report is due by 1 July of each year [T]he annual report shall cover information on crops harvested during the previous calendar year"
13. The Discharger violated the Reissued General Order and the MRP by failing to submit the 2015 Annual Report with appurtenant components as required by the MRP that accompanies the Reissued General Order.

SUMMARY OF ALLEGED VIOLATION

1. **Violation:** The Discharger failed to submit an annual report for 2015 with appurtenant components by 1 July 2016 as required by the Reissued General Order and the MRP. As of the date of this Complaint the report is now 196 days late. The total number of days the Discharger has been out of compliance is the basis for determining the recommended administrative civil liability amount.

The Discharger has been out of compliance for a total of 196 days.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

14. On 17 November 2009, the State Water Resources Control Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing

administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability. This policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final_111709.pdf.

15. The administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy. In summary, this penalty assessment is based on a consideration of the failure to respond to requests made pursuant to Water Code section 13267, subdivision (b), for the alleged violation. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

The required factors have been considered using the methodology in the Enforcement Policy, as explained in detail in Attachment A and shown in the Penalty Calculation for Civil Liability (Attachment B).

16. The maximum penalty for the violation described above is \$196,000 based on a calculation of the total number of per-day violations times the statutory maximum penalty (196 total days of violation X \$1,000). However, based on consideration of the above facts and after applying the penalty methodology, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **seventy-five thousand six hundred dollars (\$75,600)** for the violation cited above. The specific factors considered in this penalty are detailed in Attachment A. The Discharger's culpability, history of violations, and ability to pay and continue in business were considered. Other factors as justice may require were considered, but circumstances warranting an adjustment under this step were not identified by staff or provided by the Discharger.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

The Assistant Executive Officer proposes that the Discharger be assessed an administrative civil liability pursuant to Water Code sections 13323 and 13268 in the amount of **seventy-five thousand six hundred dollars (\$75,600)** for failure to submit the 2015 Annual Report with appurtenant components by the 1 July 2016 deadline as required by the Reissued General Order and the MRP.

If the Central Valley Water Board holds a hearing, it may choose to impose an administrative civil liability in the amount proposed or for a different amount, decline to seek civil liability, or refer the matter to the Attorney General to have a Superior Court consider enforcement. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the administrative civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing.

There are no statutes of limitations that apply to administrative proceedings. The statutes of limitation that refer to "actions" and "special proceedings" and are contained in the California Code

of Civil Procedure apply to judicial proceedings, not administrative proceedings. See City of Oakland v. Public Employees' Retirement System (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.

Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.

Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to California Code of Regulations, title 14, sections 15308 and 15321, subdivision (a)(2).

Payment of the assessed liability amount does not absolve the Discharger from complying with the Reissued General Order or the MRP, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with the Reissued General Order, the MRP, and/or future orders issued by the Central Valley Water Board.

1/13/2017

Date

Clay L. Rodgers

Clay L. Rodgers
Assistant Executive Officer
Central Valley Water Board Prosecution Team

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent James G. and Amelia M. Sweeney (Discharger) in connection with Administrative Civil Liability Complaint R5-2017-0504 (Complaint);
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. ☐ **(Check here if the Discharger will waive its right to a hearing and accept the proposed liability amount of seventy-five thousand six hundred dollars [\$75,600])** I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and

I certify that the Discharger will be liable for **seventy-five thousand six hundred dollars (\$75,600) in full.**

The Discharger shall remit payment of the adjusted liability amount, by check, which will contain a reference to "ACL Complaint R5-2017-0504" and will be made payable to the "State Water Resources Control Board Cleanup and Abatement Account". Payment must be received by the Central Valley Water Board by **3 February 2017** or this matter will be placed on the Central Valley Water Board's agenda for consideration of adoption at the **6/7 April 2017** Central Valley Water Board meeting. Payment must be received at the following address: State Water Resources Control Board, Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888. A copy of the check must also be received by the Central Valley Water Board.

I understand that payment of the **\$75,600** in full is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

4. ☐ **(Check here if the Discharger will waive the 90-day hearing requirement, but wishes to engage in settlement negotiations. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint but reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
5. ☐ **(Check here if the Discharger will waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint but reserve the ability to request a hearing in the future. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

EXHIBIT A

Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies
Order R5-2013-0122

can be viewed at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0122.pdf

EXHIBIT B

Notice of Violation Issued 15 August 2016 for Failure to Submit 2015 Annual Report



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

15 August 2016

FILE

NOTICE OF VIOLATION

CERTIFIED MAIL

7015 1520 0000 9052 6425

James G. & Amelia M. Sweeney (Owner/Operator)
Sweeney Dairy
30712 Road 170
Visalia, CA 93292

POTENTIAL ADMINISTRATIVE CIVIL LIABILITY FOR FAILURE TO SUBMIT THE 2015 ANNUAL REPORT, SWEENEY DAIRY, WQID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

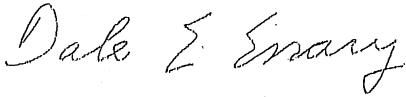
The dairy facility identified above is regulated by the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order), which was issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) on 3 October 2013. The Reissued General Order required that a 2015 Annual Report (Annual Report) be submitted for regulated facilities by 1 July 2016. To date, the required Annual Report has not been received.

The required report is requested pursuant to California Water Code (CWC) section 13267. CWC section 13268 provides that failure to submit the required report can subject you to administrative civil liability (monetary penalties) at a rate of up to \$1,000 for each day the report is late or substantially incomplete if imposed by the Central Valley Water Board, or at a rate up to \$5,000 for each day a report is late or substantially incomplete if imposed by the superior court. It is important that you promptly provide the Central Valley Water Board with the Annual Report required by the Reissued General Order that was due by 1 July 2016, to minimize your potential liability.

Please note that an annual report is required for the subject facility as long as it is regulated under the Reissued General Order, even if the facility was vacant during the 2015 calendar year. If the facility was vacant during 2015, no manure or wastewater was exported during 2015, and no manure or wastewater was land applied during 2015, you must submit a report that contains this information and that provides groundwater monitoring data for any domestic or agricultural wells on site.

If the dairy is currently in the closure process, but it operated as a dairy during part of the 2015 calendar year, you must submit a report which provides data on manure and crop production and land application or export of manure or wastewater, as well as groundwater data for any domestic or agricultural wells on site.

Please contact Lorin Sutton at (559) 445-6086 if you have any questions regarding this matter.

A handwritten signature in cursive script that reads "Dale E. Essary".

DALE E. ESSARY, PE
Senior Engineer
Confined Animals Unit

EXHIBIT C

Pre-ACL Settlement Letter Issued 1 December 2016
Forthcoming Administrative Civil Liability Complaint for Failure to Submit 2015 Annual Report



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

FILE

1 December 2016

James G. and Amelia M. Sweeney (owner/operator)
Sweeney Dairy
30712 Road 170
Visalia, CA 93292

CERTIFIED MAIL
7015 1520 0000 9052 6449

INVITATION TO ENTER INTO SETTLEMENT PRIOR TO ISSUANCE OF ADMINISTRATIVE CIVIL LIABILITY FOR FAILURE TO SUBMIT THE 2015 ANNUAL REPORT, SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

Please read this notice carefully. The purpose of this letter is to inform you of a forthcoming Administrative Civil Liability Complaint (Complaint), and to notify you of your opportunity to negotiate and settle the assessment of monetary penalties for your failure to comply with the California Water Code.

The Sweeney Dairy is regulated under the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order). The Reissued General Order and the accompanying Monitoring and Reporting Program (MRP) required regulated facilities to submit an annual monitoring report for the calendar year 2015 (2015 Annual Report) by 1 July 2016 pursuant to California Water Code section 13267. On 15 August 2016, Central Valley Water Board staff issued a Notice of Violation notifying you that the 2015 Annual Report had not been received for your dairy facility. The Notice of Violation also requested that the delinquent report be submitted as soon as possible to avoid incurring any additional liability. To date, the Central Valley Water Board has not received the 2015 Annual Report.

You are potentially liable for up to \$153,000 in administrative civil liability for this alleged violation.

Based on our review and after conducting a preliminary penalty calculation, the Assistant Executive Officer of the Central Valley Water Board intends to issue a Complaint seeking an administrative civil liability assessment against you. A proposed penalty amount has been calculated considering the methodology in the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy) and is based on facts known to date. However, this proposed penalty amount is subject to modification should additional information come to light. The full Enforcement Policy may be found here:
http://www.swrcb.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

By way of this letter, you are being formally notified of the opportunity to meet to discuss the facts regarding the alleged violations, including the option of settlement. This meeting affords you the opportunity to potentially reduce the proposed penalty amount if you present new information to the Central Valley Water Board staff, or other information you believe is relevant

1 December 2016

to determining an appropriate monetary penalty. All settlement communications would be kept confidential subject to California Evidence Code sections 1152 and 1154.

In order to initiate confidential discussions to settle this matter, you must contact me by **6 January 2017** to schedule a day and time to meet with Central Valley Water Board staff. If you choose to retain legal counsel, please provide the name and contact information for the attorney who will be representing you in this matter. Once a meeting has been arranged, you will be provided with additional information regarding the violation.

If you do not respond by **6 January 2017**, then the Assistant Executive Officer will issue the Complaint and this matter will proceed to a formal enforcement hearing before the Central Valley Water Board, or the Assistant Executive Officer may refer the matter to the Attorney General's Office or other prosecution agency. If a settlement is reached, the Assistant Executive Officer will forego issuing the Complaint.

If you have any questions, please contact me by phone at (559) 445-5093 or by email at dale.essary@waterboards.ca.gov.



DALE E. ESSARY
Senior WRC Engineer
Member of the Prosecution Team

cc: Mr. Andrew Altevogt, Central Valley Water Board Prosecution Team, Rancho Cordova
Mr. Clay Rodgers, Central Valley Water Board Prosecution Team, Fresno
Ms. Susie Loscutoff, Office of Enforcement, SWRCB, Sacramento
Tulare County Resource Management Department, Visalia
Tulare County Health & Human Services Agency, Visalia